

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Effingham Equity,
Petitioner,

v.

Douglas County, Illinois; Arcola Township Road District – Arcola
Township (Douglas County), Illinois; Illinois Central Railroad Co.;
and Illinois Department of Transportation, Illinois,
Respondents.

Petition for permission to re-open grade crossing of public
highways and streets with railroad tracks (rail spur).

T10-0039

DRAFT AGREED ORDER

By the Commission:

PROCEDURAL HISTORY

On March 15, 2010, Effingham Equity (“EE”) filed a Petition with the Illinois Commerce Commission (“Commission”) in the above-captioned matter seeking an order authorizing the modification of the TR119/600N (AAR/DOT 289 118R, railroad milepost 154.11-M) highway-rail grade crossing (“crossing”) of the Illinois Central Railroad Company’s (“IC” or “Company”) track located in Galton, Douglas County, Illinois. On May 25, 2010, the Petitioner filed an Amended Petition altering the proposed design of the crossing.

Pursuant to notice as required by law and the rules and regulations of the Commission, the matter came on for hearing before a duly authorized Administrative Law Judge (“ALJ”) of the Commission on June 15, 2010, at the Commission’s offices in Springfield, Illinois. Appearances were entered by Mr. Dennis Montavon, on behalf of the Petitioner, Mr. Thomas Healey, Counsel for the Company, Mr. James Crane, Douglas County Engineer, Mr. Jason Johnson, on behalf of the Illinois Department of Transportation (“IDOT”) and Mr. Joseph VonDeBur, on behalf of Commission staff. A statement was entered into the record by Mr. Mark Nacke, Arcola Township Highway Commissioner, verifying the Township’s support for the Petition. Because the Petitioner was not represented by legal counsel, the ALJ continued the hearing until June 29, 2010, to allow the Petitioner time to procure legal counsel and the Parties time to resolve any conflicting issues.

Pursuant to notice as required by law and the rules and regulations of the Commission, the matter came on for hearing before a duly authorized Administrative Law Judge (“ALJ”) of the Commission on July 27, 2010, at the Commission’s offices in

Springfield, Illinois. Appearances were entered by Mr. Jon Ellis, Counsel for the Petitioner, Mr. Jeremy Berman, Counsel for the Company, Mr. James Crane, Douglas County Engineer, Mr. James Morris, on behalf of the Illinois Department of Transportation ("IDOT") and Mr. Joseph VonDeBur, on behalf of Commission staff. Additional Exhibits were presented for the record without objection and a Draft Agreed Order was submitted for the approval and use of the ALJ. At the conclusion of the hearing the matter was marked "Heard and Taken."

PETITIONER'S EVIDENCE

Mr. Dennis Montavon, General Manager of Effingham Equity, and James Crane, testified on behalf of Effingham Equity.

Effingham Equity proposes to construct an extension of an existing spur track parallel to, and approximately 30 feet east of, the existing Illinois Central Railroad Company north-south main line track crossing of TR119/600N (AAR/DOT 289 118R, railroad milepost 154.11-M). The spur track extension is in conjunction with the proposed development of the Effingham Equity Galton Branch agricultural fertilizer distribution facility ("Galton Facility"), which will serve Douglas and Champaign Counties. The proposed facility will require rail freight services off of the IC main line track and will include various agricultural materials. EE estimates the cost of the new facility, including the extension of the spur track, to be between \$5,452,000 and \$6,129,000, as shown in Petitioner's Exhibit 4.

TR119/600N is currently under the jurisdiction of Arcola Township. The roadway has an average daily traffic count (ADT) over the main line track crossing of 100 vehicles per day at up to 55 miles per hour (MPH), with a projected ADT of 502 vehicles per day over the main line track crossing upon completion of the Galton Facility (see Petitioner's Exhibit 13). The IC main line track currently carries 17 trains per day at 40-79 MPH, which includes 6 Amtrak passenger trains at up to 79 MPH (see Petitioner's Exhibit 3). EE proposes to extend the spur track to carry approximately 187 to 374 cars per year at 10 MPH maximum over the crossing that is the subject of their Petition. The existing main line track of the IC is currently protected by automatic flashing light signals and gates controlled by constant warning time circuitry. The Company would be the only party to move trains on the spur track through the proposed highway-rail at-grade crossing.

Douglas County has entered into an Economic Development Program (EDP)/Truck Access Route Program (TARP) agreement, Petitioner's Exhibit 7, with IDOT to fund a major portion of roadway improvements focused on the intersection of US Route 45 and TR119/600N (hereafter referred to as "the intersection"), including widening of US 45 and the addition of turn lanes to accommodate the queue of vehicles at the intersection. TR119/600N will be widened and upgraded to accommodate 80,000 lb. vehicles, which will include improvement of the TR119/600N crossing approaches, widening of the TR119/600N crossing surface (as necessary) and relocation of the TR119/600N signals (as necessary). The project covers US 45,

approximately 1200 feet north and south of the intersection, and TR119/600N, approximately 160 feet west and approximately 1100 feet east of the intersection. The total estimated cost of the roadway improvements is approximately \$2,329,000. EDP funding will be used to pay for \$2,000,000 of those costs and TARP funding will be used to pay for \$26,700 of those costs. The County will pay for all remaining project costs.

The extension of the spur track will be done by EE or their appointed agent at the sole expense of EE. The installation of the spur track crossing surface will be done by EE or their appointed agent with the cost of the installation to be paid for by EE with reimbursement from the County of 50% of the installation cost as per the executed EDP/TARP Agreement and Developer Agreement, Petitioner's Exhibits 7 & 8, respectively. All future maintenance costs of the proposed spur track crossing surface will be borne by EE.

All signal and circuitry work required to relocate the existing warning devices to the east side of the extended spur track to be done by ICRR or their appointed agent. Installation costs, estimated to be \$36,489 (see Petitioner's Exhibit 15), will be borne by EE with reimbursement from Douglas County of 50% of the installation cost as per the executed Economic Development/TARP Agreement and Developer Agreement. Maintenance costs to be borne by ICRR, although EE and the ICRR are working on a maintenance agreement.

All roadway improvement work will be performed by Douglas County or their appointed agent with construction costs, estimated to be \$2,329,000 (see Petitioner's Exhibit 7), to be borne by Douglas County via EDP & TARP funds. Maintenance costs to be borne by their respective roadway authority; US 45 – IDOT, TR119/600N – Arcola Township.

During the July 27 hearing, the Petitioner offered the following Exhibits without objection, which were admitted as Petitioner's Exhibits 1 through 17:

1. ICC Crossing Information and Pictures dated June 6, 2000 with Aerial Road Profile
2. US DOT Crossing Inventory Form dated November 18, 2009
3. Revised US DOT Inventory Form dated June 28, 2010
4. EE Galton Plant Cost Estimate (Memo dated October 5, 2009)
5. Aerial Location Map
6. Design Nine Track Agreement Exhibit 6 dated July 14, 2010
7. IDOT-Douglas County EDP Agreement
8. Local Agency (Douglas County) / Company (Effingham Equity) Agreement
9. IDOT Resolution Establishing Designated Truck Route
10. Douglas County Highway Department Intersection Design Study (3 pages)
11. Douglas County Highway Department Petition Appendix 5 dated April 20, 2010

12. Douglas County Petition Appendix 6 Roadway Improvement Plans and Cost Estimates
13. Existing - Proposed Traffic Counts
14. Railroad's Proposed Signal Work dated July 9, 2010
15. Railroad's Estimated Cost of Signal and Circuitry Work dated July 14, 2010
16. IDOT Design Exception Request Project Identification dated June 29, 2010
17. Preliminary Environmental Site Assessment approval letter dated _____

The project is in the best interest of the public and will improve the public safety of this crossing, which is demonstrated in the execution of the IDOT-Douglas County EDP Agreement. EE has shown that their new facility will generate a significant number of temporary and permanent jobs in its construction and operation.

RESPONDENT ILLINOIS CENTRAL RAILROAD COMPANY'S EVIDENCE

Illinois Central Railroad Company supports the project as proposed by Petitioner.

RESPONDENT DOUGLAS COUNTY'S EVIDENCE

Douglas County is the lead agency on the roadway portion of the project and fully supports the Petitioner's request as demonstrated in the IDOT-Douglas County EDP Agreement.

RESPONDENT ARCOLA TOWNSHIP ROAD DISTRICT'S EVIDENCE

A statement was entered into the record of the June 15, 2010, hearing by Mr. Mark Nacke, Arcola Township Highway Commissioner, verifying the support of the Petition by the Township.

RESPONDENT ILLINOIS DEPARTMENT OF TRANSPORTATION'S POSITION

IDOT is of the opinion that the proposed extension of the existing spur track should be incorporated into the existing warning devices, as recommended by Commission Staff.

STAFF'S POSITION

Staff believes the Petitioner's request to be fair and reasonable and should be approved by the Commission. Staff is of the opinion that the safest option is to incorporate the proposed extension of the existing spur track modifying the design of an existing highway-rail at-grade crossing into the existing warning devices, subject to review and approval by staff.

COMMISSION ANALYSIS AND CONCLUSION

FINDINGS

The Commission, having given due consideration to the entire record herein and being fully advised in the premises, is of the opinion and finds that:

- 1) The Commission has jurisdiction of the subject matter hereof and the Parties hereto;
- 2) The recitals of the facts set forth in the prefatory portion of this Order are supported by the evidence of the record and are hereby adopted as findings of fact;
- 3) Effingham Equity should be granted permission to extend an existing second track parallel to the Illinois Central Railroad Company's main line track and through the TR119/600N roadway;
- 4) The Illinois Central Railroad Company should relocate the existing warning devices, as necessary, and modify the appropriate constant warning time circuitry to incorporate the extended spur track crossing;
- 5) The crossing surface and approaches for the extended spur track should conform to the requirements of 92 Ill. Adm. Code 1535 and all signage shall conform to the requirements and specifications of 92 Ill. Adm. Code and the Manual on Uniform Traffic Control Devices (MUTCD);
- 6) The cost for the project should be paid by the Parties as follows:
 - i) Installation and all future maintenance costs of the extended spur track should be paid by Effingham Equity;
 - ii) Installation costs of the proposed spur track crossing surface should be paid by Effingham Equity with reimbursement from Douglas County of 50% of the installation cost as per the executed Economic Development/TARP Agreement and Developer Agreement, and all future maintenance of the spur track crossing surface should be the responsibility of Effingham Equity;
 - iii) All signal and circuitry work required to relocate the existing warning devices to the east side of the extended spur track should be paid by Effingham Equity with reimbursement from Douglas County of 50% of the installation cost as per the executed Economic Development/TARP Agreement and Developer Agreement, and all future maintenance of those signals and circuitry shall be the responsibility of the Illinois Central Railroad Company, although nothing contained herein shall prohibit Effingham Equity and the Illinois Central Railroad Company from negotiating other terms and condition for payment of future maintenance;

- iv) All roadway improvement costs at the crossing should be the responsibility of Douglas County and all future maintenance costs of those roadway improvements should be the responsibility of the respective roadway authority;
- 7) Effingham Equity, Douglas County and the Illinois Central Railroad Company should each, upon entry of this Order, proceed toward the completion of the proposed improvements, accomplishing the work with their own forces or appropriated contracted services within twenty-four (24) months from the date of this Commission Order;
- 8) 625 ILCS 5/18c-1701 and 1704 require each “person”, as defined by Section 18c-1104, to comply with every regulation or order of the Commission. These sections further provide that any person who fails to comply with a Commission regulation or order shall forfeit to the state not more than \$1,000 for each such failure, with each day’s continuance of the violation being considered a separate offense. While the Commission expects all parties to comply with this Order in all matters addressed herein and in a timely manner, the Commission advises that any failure to comply may result in the assessment of such sanctions;
- 9) Any person making a Request for an Extension of Time up to 30 days to complete a project ordered by the Commission must file a request with the Director of Processing and Information no later than 14 days in advance of the scheduled deadline. An Administrative Law Judge will consider and decide the request;
- 10) Any person making a Request for an Extension of Time that exceeds 30 days must file a Petition for Supplemental Order with the Director of Processing and Information no later than 21 days in advance of the scheduled deadline. The Commission will decide Petitions for Supplemental Orders;
- 11) Requests for Extension of Time and Petitions for Supplemental Orders must include the reason(s) the additional time is needed to complete the work and the time within which the project will be completed. Prior to submitting a Request for Extension of Time or a Petition for Supplemental Order, the person must notify the Commission’s Rail Safety Program Administrator that it is unable to complete the project within the ordered timeframe;
- 12) The Commission or its Administrative Law Judge reserves the right to deny Petitions for Supplemental Orders and Requests for Extension of Time, if the reason(s) supporting the request is (are) insufficient or where it appears the person has not made a good faith effort to complete the project within the allotted time. Failure of the Commission or Administrative Law Judge to

act on a pleading prior to the deadline means the originally ordered completion date remains in effect.

IT IS THEREFORE ORDERED that Effingham Equity extend an existing second track parallel to the Illinois Central Railroad Company's main line track and through the TR119/600N (600N) roadway.

IT IS FURTHER ORDERED the Illinois Central Railroad Company shall relocate the existing automatic flashing light signals and gates controlled by constant warning time circuitry to incorporate the East side of the crossing in accordance with the plans as set forth in Petitioner's Exhibit No. 14 and the requirements of 92 Ill. Adm. Code 1535.

IT IS FURTHER ORDERED that the crossing surface and approaches for the extended spur track shall conform to the requirements of 92 Ill. Adm. Code 1535 and all signage shall conform to the requirements and specifications of 92 Illinois Administrative Code and the Manual on Uniform Traffic Control Devices (MUTCD).

IT IS FURTHER ORDERED that the cost of the proposed improvements shall be divided as shown in Finding 6, as noted above.

IT IS FURTHER ORDERED that since the warning device improvement(s) at the subject crossing(s) will be performed by railroad crews, no flagging or contractor liability insurance will be required for said work.

IT IS FURTHER ORDERED that since the approach improvements at the subject crossing will be performed by Douglas County, flagging and contractor liability insurance will be required for said work.

IT IS FURTHER ORDERED that the Illinois Central Railroad Company shall file Form 3 of 92 Ill. Adm. Code 1535 of this Commission showing details of the required automatic warning devices and circuitry, and shall receive approval by X-Resolution before commencing the work of installation.

IT IS FURTHER ORDERED that Effingham Equity, the Illinois Central Railroad Company, and Douglas County shall each, at six (6) month intervals from the date of the Commission Order approving this Agreement, submit to the Director of Processing and Information, Transportation Bureau of the Commission, a Project Status Report regarding the progress each has made toward completion of the work required by this Agreement. Each Project Status Report shall include the Commission Order's docket number, the Order date, the project completion date as noted in the Order, crossing information (inventory number and railroad milepost), type of improvement, and the name, title, mailing address, phone number, facsimile number, and electronic mailing address of the EE, IC or County Project Manager.

IT IS FURTHER ORDERED that the Illinois Central Railroad Company shall, within

thirty (30) days of the completion of the warning device relocation and circuitry modifications submit a completely updated United States Department of Transportation Inventory Form (#6180.71) to the Federal Railroad Administration, the Chief of Data Services at the Illinois Department of Transportation, and the Director of Processing and Information, Transportation Bureau of the Commission.

IT IS FURTHER ORDERED that Effingham Equity, the Illinois Central Railroad Company, and Douglas County are hereby required and directed to submit a Project Status Report, to the Director of Processing and Information, Transportation Bureau of the Commission, stating that the work herein required of each has been completed. Said Report shall be submitted within thirty (30) days after the project completion date.

IT IS FURTHER ORDERED that any person making a Request for an Extension of Time up to 30 days to complete a project ordered by the Commission must file a request with the Director of Processing and Information no later than 14 days in advance of the scheduled deadline. An Administrative Law Judge will consider and decide the request.

IT IS FURTHER ORDERED that any person making a Request for an Extension of Time that exceeds 30 days must file a Petition For Supplemental Order with the Director of Processing and Information no later than 21 days in advance of the scheduled deadline. The Commission will decide Petitions for Supplemental Orders.

IT IS FURTHER ORDERED that Requests for Extension of Time and Petitions For Supplemental Orders must include the reason(s) the additional time is needed to complete the work and the time within which the project will be completed. Prior to submitting a Request for Extension of Time or a Petition for Supplemental Order, the person must notify the Commission's Rail Safety Program Administrator that it is unable to complete the project within the ordered timeframe.

IT IS FURTHER ORDERED that the Commission or its Administrative Law Judge reserves the right to deny Petitions for Supplemental Orders and Requests for Extension of Time, if the reason(s) supporting the request is (are) insufficient or where it appears the person has not made a good faith effort to complete the project within the allotted time. Failure of the Commission or Administrative Law Judge to act on a pleading prior to the deadline means the originally ordered completion date remains in effect.

IT IS FURTHER ORDERED that, subject to Section 18c-2201 and 18c-2206 of the Law, this is a final decision subject to the Administrative Review Law.

By Order of the Commission this Nth day of Month 20##.

MANUEL FLORES
ACTING CHAIRMAN